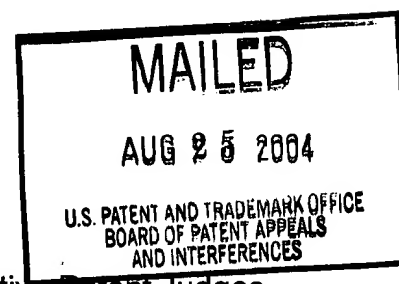


UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte SANDRINE DECOSTER, VERONIQUE DOUIN
and VIRGINIE BAILLY

Appeal No. 2003-2140
Application No. 09/692,716



Before WILLIAM F. SMITH, SCHEINER and MILLS,¹ Administrative Patent Judges.

SCHEINER, Administrative Patent Judge.

VACATUR AND REMAND TO THE EXAMINER

On November 28, 2003, having considered appellants' Brief on Appeal (paper no. 19, filed June 4, 2003), and the examiner's Answer (paper no. 20, entered August 26, 2003), a panel of the Board handed down a decision "on brief," i.e., without an oral hearing, affirming the examiner's final rejection of claims 1 thorough 104, all of the claims pending in the application. Subsequently, a communication (paper no. 25) was received from appellants informing the Board that a Reply Brief and a separate Request for Oral Hearing had been submitted on October 27, 2003, and requesting that "the Decision mailed November 28, 2003, [] be vacated in order to have the October 27, 2003, Reply Brief considered and [an] Oral Hearing scheduled."

¹ Administrative Patent Judge Paul Lieberman retired subsequent to the Board's decision. Accordingly, Administrative Patent Judge William F. Smith has been substituted for Administrative Patent Judge Lieberman. See In re Bose Corp., 772 F.2d 866, 869, 227 USPQ 1, 4 (Fed. Cir. 1985).

We have determined that both the Reply Brief and the Request for Oral Hearing were timely filed, but were not entered into the record before the application was forwarded to the Board for decision. As this board functions as a board of review,² and the Reply Brief has not yet been considered or otherwise acknowledged by the examiner, this case is not in condition for a decision on appeal. Accordingly, we vacate³ the Decision of the Board entered November 28, 2003 and remand the application to the jurisdiction of the examiner to consider appellants' Reply Brief and take appropriate action.

² 35 U.S.C. § 6 (b) states that "[t]he [board] shall . . . review adverse decisions of examiners upon applications for patents . . ."

³ The term "vacate" means to set aside or void. Black's Law Dictionary 1075 (abridged 6th ed. 1991). When the board vacates a decision and remands the application to the examiner, it is as if the decision had never been handed down, and jurisdiction over the application on appeal is returned to the examiner for further action.

This application, by virtue of its "special" status, requires an immediate action. MPEP § 708.01 (7th ed., rev. 1, February 2000). It is important that the Board be informed promptly of any action affecting the appeal in this case. Should the case be returned to the jurisdiction of the Board, appellants will have the opportunity to schedule and oral hearing.

VACATED AND REMANDED


William F. Smith
Administrative Patent Judge


Toni R. Scheiner
Administrative Patent Judge


Demetra J. Mills
Administrative Patent Judge

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